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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/342,255	06/29/1999	MAKOTO OGURA	35.C11293DI	6294

5514 7590 06/04/2003

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EXAMINER

SEMBER, THOMAS M

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/342,255

Applicant(s)

Ogura

Examiner

Thomas Sember

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 12, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 53 and 55-59 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 53 and 55-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s): _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s): _____ 6) ☐ Other:

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Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 53 and 55-58 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-46 of U.S. Patent No. 6,015,200. Although the conflicting claims are not identical, they are not patentably distinct from each other because applicant merely uses different terminology to claim the same device. The main difference between claims 1-46 of U.S. Patent No. 6,015,200 and claims 53 and 55-58

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of pending application 09/342,25 is that applicant now claims "wherein said first light reflecting and/or diffusing area reflects and/or diffuses a portion of the incident light from the light entrance face and reflects and/or diffuses a portion of the incident light from the light entrance face toward a direction of the other side of the light entrance face." The applicant points out in his arguments that this limitation further defines element 6 in figure 5a. However, claim 22 of U.S. Patent No. 6,015,200 defines element 6 in figure 5a by reciting "an area on a side opposed to the light entrance area, for reflecting/diffusing an entering light beam into the longitudinal direction of said rod-shaped translucent member." Claims 24-25 defines the area as being angled. Thus, the applicant only uses different terminology to claim the same exact invention. There is no structural difference between claims 53 and 55-58 of applicant's claimed invention and claims 1-46 of U.S. Patent No. 6,015,200 and therefore claims 53 and 55-58 are properly rejected under the judicially created doctrine of obviousness-type double patenting.

Furthermore claim 59 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-46 of U.S. Patent No. 6,015,200. Although the conflicting claim is not identical, they are not patentably distinct from each other because applicant merely uses different terminology to claim the same device. The main difference between claims 1-46 of U.S. Patent No. 6,015,200 and claim 8 of pending application 09/342,25 is that applicant now claims that "the second light/reflecting and/or diffusing area...is inclined with respect to a longitudinal axis of the translucent member." Claim 8 of Ogura (U.S. Patent No 6,015,200 claims " a second reflecting and/or diffusing area for reflecting and/or diffusing the

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light to said light exit area" but doesn't include the limitation that the second reflector is inclined. It would have been an obvious engineering design choice to modify the second reflector of U.S. Patent No. 6,015,200 so as to be inclined with respect to the translucent member's longitudinal surface in order to efficiently transmit light to the light exit area.


Response to Arguments

Applicant's arguments with respect to claims 53 and 55-59 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas M. Sember whose telephone number is (703) 308-1938. The examiner can normally be reached on Monday - Thursday from 8:00 AM - 5:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea, can be reached at (703) 305-4939. The fax phone number for this group is (703) 308-7724.

Any inquiries of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 305-4900.


Thomas M. Sember
Primary Examiner
June 1, 2003